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| From: | General Secretariat of the Council |
| To: | Working Party on Shipping |
| N° prev. doc.: | 10126/23 |
| Subject: | Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/16/EC on port State control - Comments from Ireland |

Delegations will find, in Annex, comments from **IRELAND** on the above mentioned subject.

Proposal to Amend Directive 2009/16/EC on Port State Control

Submission from Ireland

1. Article 2(1) of the proposal and its impact on Article 3(3) of the Directive:

If the aim here is to have Member States ratify the relevant conventions, they should be attached to the risk profile of the ship. This concept was agreed by the Paris MoU at their meeting in May this year and that a more detailed inspection should not be carried out when the underlying convention does not provide a “no-more favourable clause”. In our view the reference to no-more favourable treatment should not be included with regard to Conventions that do not contain a “no-more favourable” clause. As such we suggest clarifying this in the text of Article 3(3) as follows:

*“3. When inspecting a ship flying the flag of a State which is not a party to a Convention **with a ‘no more favourable’ treatment clause**, Member States shall ensure that the treatment of that ship and its crew is not more favourable than that of a ship flying the flag of a State party to that Convention. Such ship shall be subject to a more detailed inspection in accordance with procedures established by the Paris MOU.”*

2. Article 1(2)(a) of the proposal to amend Article 3(4) of the Directive and insert new paragraph 4a into Article 3:

- a. When referring to length of fishing vessel, in our view the term “overall” should not be used and instead we suggest using “metres in length and over” to align with the definition in the Torremolinos Protocol.
- b. Ireland is in favour of the inclusion of port state control inspections for fishing vessels over 24 metres in length and carries out these inspections already. We note that the Paris MoU has established a task force to develop a port state control regime for fishing vessels. As such we suggest that the EU Commission should cooperate with the Paris MoU in this regard and that the text of paragraph 4a is amended as follows:

*“4a. Member States may carry out port state control inspections of fishing vessels of **24 metres in length and over**. The Commission shall adopt implementing acts establishing the modalities of such a specific port state control regime for fishing vessels of **24 metres in length and over in cooperation with the Paris MoU**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 31(2).”*

3. Article 1(3) of the proposal to insert a new paragraph 2a into Article 5 of the Directive:

In implementing this paragraph, would this mean that significant additional inspections would need to be carried out before the limit commences for some Member States?

4. Article 1(6) of the proposal to replace Article 8(1) and 8(2) of the Directive:

- a. In new Article 8(1)(b) should it refer to the “Union” instead of the “Community”?
- b. In new Article 8(1)(b) and the reference to an inspection being carried out in another port of call within the Union or Paris MoU region within 15 days, we suggest that special consideration be given to ro-pax vessels operating on regular routes. These vessels can become Priority 1 at short notice and the

power to instruct the vessel to remain alongside until an inspection is carried out has been removed from the current directive. In addition, where ro-pax vessels become Priority 1 for reasons not directly related to safety or pollution prevention and it is not convenient for either the port State or the operating company to delay the scheduled sailings in order to carry out an inspection it should be possible to allow the vessel to continue in operation for short period of time (15 days) and postpone the inspection even if the vessel calls at another port in the Union. Ro-pax vessels operate to regular daily schedules and it is not generally the case that such ships would sail out of the PMoU region to avoid inspection. Such vessels are also subject to a more rigorous inspection regime than other vessels on which an inspection can be postponed.

5. Article 1(7) of the proposal to insert a new Article 8a in the Directive:

We would welcome clarity on the force majeure provision set out in the new Article 8a and whether it is different to the circumstances set out in Article 21(6). Can confirmation also be provided as to whether force majeure applies to the ship, or port state control officer, or both.

6. Article 9 of the Directive and Annex III

We would welcome clarity on the thinking behind deletion of Article 9 and Annex III of the Directive.

7. Article 1(9) of the proposal to insert a new subparagraph (c) in Article 10(2) of the Directive:

In our view the inclusion of environmental parameters will give rise to a double counting of deficiencies because 10(2)(b) already takes into account deficiencies recorded which could include environmental deficiencies under MARPOL and other relevant environment conventions. Relatively minor deficiencies may have a disproportionate effect on the risk profile and lead to under reporting of deficiencies. We suggest this provision is deleted. In addition, it should be deleted from the ship risk profile in Annex I and from the table in Annex II.

8. Article 1(10) of the proposal substituting Article 14(4) of the Directive:

The requirement to have no less than two port state control officers under this provision will give rise to a resourcing issue especially where an expanded inspection is required due to overriding priority or unexpected factor inspections on high-risk ships. As such we suggest the amendment to this provision is deleted. Alternatively, as a compromise and to ensure a more flexible approach, we can suggest the following text instead:

“4. A periodic expanded inspection in accordance with Annex 9 of the Paris MoU shall be carried out by no less than two port State control officers. Member States shall take into consideration the need for no less than two port State control officers when conducting additional expanded inspections due to overriding or unexpected factors.”

9. Article 1(12)(d) of the proposal inserting a new paragraph 4a into Article 16 of the Directive:

- a. We suggest that consideration be given to the recently published PSCircular 103 by the Paris MoU. Even though this addresses Guidance on foot of suspension of the Russian Federation from the Paris MoU it does contain updated general provisions which impact on the proposed text in this Article and accompanying Annex VIII.
- b. We note that is it proposed in this amendment to use the new language in line with the Paris MoU for flag state performance such as “high performance list”. Consideration needs to be given to how this sits with the proposals in the flag state directive which has not introduced these concepts yet and will

do so by means of implementing acts. In addition, we suggest that the EU Commission needs to liaise with the Secretariat of the Paris MoU on the timing of publication of its lists to ensure a suitable transition phase is put in place. As with the flag state proposal, we welcome clarity from the EU Commission as to how those transitioning from the White List to the medium performance list will be treated to ensure continuity and avoid unnecessary penalisation. Also, will the flag state directive and port state directive have the same entry into force date and this needs to be aligned with the changes to be introduced by the Paris MoU all of which need to be synchronised to ensure an efficient and effective transition.

10. Article 1(16) of the proposal inserting a new Article 24a into the Directive – comment relates to paragraph (3):

The issuing of electronic certificates does not impact on the safety of the vessel. Clarity on how electronic certificates are to be defined would be welcome. Not all certificates have an expiry date and there are those already issued which are not in electronic form. We note that this is also included in the ship risk profile under Annex I, are those ships not issued with 100% electronic certificates to be unnecessarily penalised? Several states will continue to issue some certificates such as the Safe Manning Document, CSR, International Tonnage Certificate themselves and delegate the issuing of the other time bound certificates to ROs. Therefore, a distinction should be made between certificates without an expiry date from those with one. Additionally, a low performing RO may offset some of the risk profile by issuing electronic certificates. We would welcome a discussion on this provision.

11. Annex I to the Directive – Paragraph 1(a) type of ship:

In our view, NLS tankers should be included to accurately reflect Annex 7 of the Paris MoU. Additionally, the same text to describe ship types should be used as in the Paris MoU.

12. Annex I to the Directive – Paragraph 1(c)(iv) flag state performance:

It is not stated what risk ships furnished with electronic version of the statutory certificates pose. In any case, in line with our earlier comments, we welcome a discussion on this provision.

13. Annex I to the Directive – Paragraph 1(d)(iii) recognised organisations:

Again, this provision does not state what risk is posed and as mentioned earlier, a low performing RO may offset some of the risk profile by issuing electronic certificates. We welcome a discussion on this provision.

14. Annex II to the Directive – Design of Ship Risk Profile:

In our view, some aspects of the table could be better aligned with Table 1 set out in the Paris MoU. Therefore, in order to aid discussion and to get across our comments more clearly on this matter, we have suggested amendments to the table for consideration (table attached below). As there are no weightings for the high and medium performance under ROs and Companies, we suggest taking the same approach as is set out for the Flag. In addition, we would welcome clarity on the thinking behind reducing the weighting on the type of ship from 2 to 1. As this is a tool for discussion, we have retained the additional text inserted by the proposal. However, we reiterate our earlier comments in relation to the environmental parameters which we think should be deleted from the table. Again in line with our earlier comments, in our view, the reference to E-certificates should also be deleted from the table.

15. Annex VIII to the Directive – Provisions Concerning Refusal of Access to Ports and Anchorages within the Community – (suggest this is changed to Union):

We note that the Paris MoU issued a circular (PSCircular 103) on the 4 of July this year which provides guidance on how to deal with inspections by the Russian Maritime Authority. In particular, paragraph 6 of that Circular sets out procedures for lifting a ban which is general in nature. As such we suggest that paragraphs 3 and 4 of Annex VIII to the Directive is substituted with the following text to better align with those procedures:

“3. In order to have the refusal of access order lifted, the owner or the operator must address a formal request to the competent authority of the Member State that imposed the refusal of access order. The request must be accompanied by a document from the flag Administration, issued following an on-board survey by a surveyor duly authorised by the flag State, showing that the ship fully conforms to the applicable provisions of the Conventions. This statement should be accompanied by the statutory certificates for those conventions to which the flag state is a party and attestations covering any remaining relevant instruments. The flag Administration shall provide evidence that a survey on board has taken place. The document may be in the form of an official statement which has to be issued by the flag Administration and not a recognised organisation.

4. The request for the lifting of a refusal of access order must also be accompanied by a document from the classification society(ies) showing that the ship conforms to the class standards stipulated by that society(ies), if required. The classification society(ies) must also provide evidence that an on-board visit has taken place prior to the issuance of the document.”

| | | | | Profile | | | | |
|-----------------------|--|--|------------------------------|--|------------------|---------------------------------------|--|--|
| | | | | High Risk Ship (HRS) | | Standard Risk Ship (SRS) | Low Risk Ship (LRS) | |
| Generic Parameters | | | | Criteria | Weighting Points | Criteria | Criteria | |
| 1 | Type of ship | | | Chemical Tanker Gas Carrier Oil Tanker Bulk Carrier Passenger Ship NLS-tanker | 21 | Neither a high risk nor low risk ship | All types | |
| 2 | Age of ship | | | all types > 12 y | 1 | | All ages | |
| 3a | Flag | Low performance | | 2 | | | High performance | |
| 3b | | All IMO instruments listed in Article 2 ratified | - | - | Yes | | | |
| 3c | | E-Certificate | | | Yes | | | |
| 4a | Recognised Organisation | Low or very low performance | | 1 | | | | |
| 4b | | EU Recognised | - | - | Yes | | | |
| 5 | Company | Low or very low performance | | 2 | | | | |
| Historical Parameters | | | | | | | | |
| 6 | Number of deficiencies recorded in each inspection within previous 36 months | Deficiencies | >6 in one of the inspections | - | | | ≤ 5 in every individual inspection and at least one inspection carried out in previous 36 months | |
| 7 | Number of detentions within previous 36 months | Detentions | ≥ 2 detentions | 1 | | No detention | | |

Neither a high risk nor low risk ship

| Environmental Parameters | | | | | | |
|--------------------------|---|--------------|-------------------------------|---|--|--|
| 8 | Carbon Intensity Indicator (CII) | Rating | D-E | 1 | | |
| 9 | Number of deficiencies related to MARPOL, AFS, BWM, CLC 92, Bunkers and Nairobi Conventions recorded in each inspection within previous 36 months | Deficiencies | ≥ 3 in one of the inspections | 1 | | |